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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 3(n))
and 332 of the Communications Act)

Regulatory Treatment of Mobile)
Services)

GN Docket No. 93-252

COMMENTS

OF

INDEPENDENT CELLULAR NETWORK, INC.

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Dated: November 8, 1993

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COMMENTS ON
NOTICE OF PROPOSED RULEMAKING

I.

INTRODUCTION

Independent Cellular Network, Inc., submits these its Comments on the Notice of Proposed Rule Making in the above matter, released October 8, 1993. Independent Cellular Network, Inc. ("ICN") holds cellular authorizations in the metropolitan statistical areas of Johnstown and Altoona, Pennsylvania and Parkersburg/Marietta, Wheeling, Steubenville/Weirton, and Huntington/Ashland, West Virginia. In addition, James A. Dwyer, Jr., one of the principals of ICN is involved in various other cellular activities through related entities in Ohio, West Virginia and Florida.

Mr. Dwyer has been involved in mobile communications matters for over 26 years. He was a participant in the Commission's original cellular rulemaking in 1971. He has been involved in cellular operations since 1983. Mr. Dwyer has also participated in the personal communications services rulemaking.

II.

BACKGROUND

The instant Notice of Proposed Rule Making ("Notice") seeks comments on proposals relating to issues raised by the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") which created a comprehensive framework for the regulation of mobile radio services. These issues relate to definitions; identification of various services affected by the new legislation and description of the potential regulatory treatment of those services; and delineation of the provisions of Title II of the Communications Act that will be applied to commercial mobile services and those provisions that will be forborne.

The Notice is comprehensive in scope. While ICN generally supports the thrust of the proposal, its specific Comments relate only to the issues raised in Paragraph 42 of the Notice which requests comments on whether the FCC rules should be amended to allow existing common carriers who are classified as commercial mobile services to provide dispatch service in the future.

III.

DISPATCH SERVICE MUST BE ALLOWED

ICN submits that the Commission should terminate the dispatch prohibition in total and allow both private land mobile service and commercial mobile service licensees to provide dispatch service. This ultimate goal of regulatory parity should be parity in the marketplace. Elimination of the dispatch prohibition will be a move toward providing a level playing field for mobile service providers, both private and commercial.

In response to the issue of whether there is technical justification for continuing the prohibition to dispatch, ICN asserts that specialized mobile radio ("SMR") operators have provided dispatch service since the inception of that service and the operators continue to provide such service. In fact, the Commission has authorized wide-area SMR operations which include the provision of dispatch service. See Fleet Call, Inc., 6 FCC Rcd 1533 (1991). If this service can be offered by SMR licensees, whose facilities provide interconnected mobile services, certainly cellular licensees should also be able to provide dispatch service. There must be competitive as well as a regulatory parity between mobile service providers.

Secondly, elimination of the dispatch prohibition would provide common carriers with greater flexibility to meet their customers' needs by offering the same types of

services that other carriers, such as SMR carriers, provide. ICN submits that any time that better use can be made of existing spectrum, the public benefits. To the extent operators can provide additional services, the Commission should eliminate prohibitions to such services. There should be no unnecessary limitations on the ability of existing carriers to maximize their range of offerings to the consumer.

Finally, elimination of the prohibition would promote increased competition in the dispatch service marketplace and ultimately, would lower costs to subscribers. As long as other types of carriers can provide these services, the goal of competition will be realized. As the Commission is aware, substantial competition provides strong incentive to offer attractive service and prices. Any artificial barriers should be avoided if the Commission is going to realize the perceived benefits of competition for the consumer. There should be free and unfettered competition in the marketplace.

ICN respectfully requests that the Commission take these comments into consideration in fashioning its regulatory scheme.

Respectfully submitted,

**INDEPENDENT CELLULAR
NETWORK, INC.**

By:


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